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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

Office: VERMONT SERVICE CENTER

Date: JUN -4 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

ACCORDING TO
PREVIOUSLY DETERMINED
INVASION OF PERSONAL PRIVACY

INSTRUCTIONS:

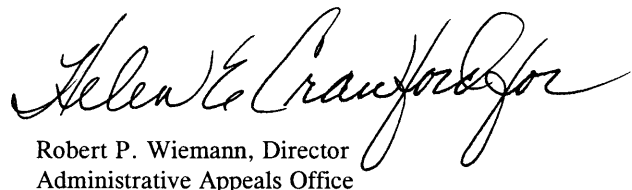
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of India, as the fiancé(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner and the beneficiary had not personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. In reaching this conclusion, the director found that the petitioner's failure to comply with the statutory requirement was not the result of extreme hardship to the petitioner or unique circumstances.

8 C.F.R. 214.2(k)(2) states, in pertinent part:

Requirement that petitioner and beneficiary have met. The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person **within the two years immediately preceding the filing of the petition.** [emphasis added]

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on June 20, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 20, 1999 and ended on June 20, 2001.

In response to Question #19 on the Form I-129F, the petitioner stated that he and the beneficiary had never met. The petitioner requested that the director waive the requirement of a personal meeting between him and the beneficiary because he was financially unable to afford the trip, was unable to take off of work, and because of bad weather in India. The director concluded that no extreme hardship or unique circumstances existed to waive the requirement of a personal meeting between the petitioner and the beneficiary within the two years that immediately preceded the filing of the petition and denied the petition accordingly.

On appeal, the petitioner submits evidence that he travelled to India in September 2001 to meet the beneficiary and take part in a religious ceremony to announce their engagement. The petitioner states that he likes the beneficiary very much and intends to marry her as soon as possible. He requests that in view of the fact that he has now met the beneficiary in person that the petition be approved.

It is important to emphasize that the regulation at section 214.2(k)(2) requires the petitioner to prove that he last met the beneficiary no more than two years prior to the filing of the

petition. In the instant case, the relevant two-year period is June 20, 1999 to June 20, 2001. According to the evidence submitted on appeal, the petitioner and beneficiary personally met in September 2001, three months after the filing of the petition. Therefore, although the petitioner and beneficiary have now met in person, their last meeting did not occur within the relevant two-year period. Therefore, the director's decision to deny the petition is affirmed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of the petition is without prejudice. Now that the petitioner and the beneficiary have met in person, the petitioner may file a new I-129F petition in the beneficiary's behalf so that the two-year period in which the parties are required to have met will apply. The petitioner should submit evidence that he and the beneficiary have met within the two-year period that immediately precedes the filing of a new petition. Without the submission of documentary evidence that clearly establishes that the petitioner and the beneficiary have met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of such requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.